

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SEGONE, INC.,

Plaintiff,

v.

FOX BROADCASTING COMPANY,

Defendant.

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Civil Action No. 3:07cv342-JRS

DEFENDANT’S RESPONSE TO SEGONE’S RESPONSE TO REPLY MEMORANDUM

Defendant Fox Broadcasting Company (“Fox”)’s Reply Memorandum In Support of Its Motion to Dismiss is not untimely. Federal Rule of Civil Procedure 6(e) provides an additional three days to respond when, as here, segOne served its Opposition brief electronically pursuant to Rule 5(b)(2)(D). *See, e.g., E.D.VA. Electronic Case Filing Policies and Procedures* manual at 25 (last updated Aug. 13, 2007) (“In accordance with Fed.R.Civ.P. 6(e) and Fed.R.Crim.P. 45(c), service by electronic means is treated the same as service by mail: *three days are added to the response period for electronic service.*”) (emphasis added). And Fed. R. Civ. P. 6(a) excludes weekends and holidays from the computation where, as here, the time to serve a brief is less than eleven days. Accordingly, where segOne’s Opposition was served electronically on August 9, the Reply was due August 17—the day that Fox filed it. Professor Gibson’s assertion to the contrary is simply incorrect. While it is true that counsel did discuss a possible extension to accommodate vacation schedules, when segOne refused to consent to the request, Fox filed its Reply on the time schedule established by the rules.

Professor Gibson also attempts to make points on the merits concerning the importance of the dispositive ruling in the Southern District of New York lawsuit that Fox and others filed against a segOne customer. Fox's view is that issues arising from Judge Batts' ruling were adequately addressed in the Motion to Dismiss briefing and do not require further comment in "Responses," sur-replies, and the like.

Respectfully submitted,

FOX BROADCASTING COMPANY

By Counsel

/s/

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CERTIFICATE OF SERVICE

I certify that on August 20, 2007, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following counsel for Plaintiff segOne, Inc.

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